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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 990 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT LAVJIBHAI - Orig. Accused - Appellant
Versus
STATE OF GUJARAT - Respondent

Appearance:
MR G RAMAKRISHNAN for Appellant - Accused
MR KG SHETH, APP for Respondent - State

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 06/08/2001

ORAL JUDGEMENT
(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant challenges the judgement and order dated 28th September 1990 of the learned Sessions Judge, Surendranagar in Sessions Case No. 76 of 1989 by which the appellant - accused was convicted for the offence under section 302 of the Indian Penal Code and sentenced to imprisonment for life.

2. The prosecution case was that, on 1-9-1989, the accused, armed with a knife, approached deceased Hira Jivan for recovery of the amount which was due from him near platform No.10 of the S.T. bus station at Ankevadia in the evening around 7 o'clock. Hira Jivan had earlier come alongwith Mansukh Shamaji and Naniben Shamaji, mother of Mansukh from Limdi to Ankevadia to get Mansukh's son Gunvant, who was 4 years of age, treated for a boil by one Karimbhai at Ankevadia. However, since Karimbhai could not be found at his residence, they were returning to Limdi and for that purpose, they were standing near platform No.10 of the S.T. bus station. When the accused asked for the repayment of money from Hira Jivan, he was told that he would be given the amount after about ten days. The accused, however, insisted that the amount should be given immediately, on which, Hira said that it was not possible for him to do so. The accused, thereupon, gave him a knife blow which caused a cut injury on his forearm, and ran away. Since Hira started bleeding, Mansukh and Naniben were taking him out for medical treatment. As soon as they came out of the gate of the S.T. bus station, the accused, who was around that place, gave three or four knife blows to Hira, one of which pierced his heart and the other pierced his lungs. Hira fell down and was taken in an auto-rickshaw to the hospital, where he died. According to the prosecution version, the accused himself went to the police station at about 8 o'clock and lodged the FIR exh.43 in which he alleged that he had demanded Rs.100=00 which were due to him from Hira Jivan near platform No.10 of the S.T. bus station of Ankevadia and at that time, Hira refused to pay it and started abusing him. As he feared that he would be manhandled by Hira and Ramla, Raju and Nagar who were with him, as they had done about a month before, he took out the knife from the sheath and while trying to merely threaten Hira, he had injured him on his right hand. Feeling scared, he tried to run away, but Hira followed him and overtook him near the octroi post, outside the bus station. He, therefore, gave Hira a blow on his chest with the knife, as a result of which Hira had fallen down and then run away from there and presented himself before the police station with the knife. According to the prosecution, Mansukh and Naniben had witnessed the incident. It is also the prosecution

case that the blood group of the blood stains found on the knife and sheath as well as the pant, which were recovered from the accused person, was found to be the same as that of the blood of the deceased, which was `B'.

3. The trial Court, on the basis of the evidence on record, came to a finding that the prosecution had established beyond any shadow of doubt that the accused intentionally caused the death of Hira Jivan by giving him knife blows on 1-9-1989 in the evening at about 7.30 p.m.

4. Mansukh, in his deposition exh.9, has stated that he knew the accused who was plying an auto-rickshaw of one Uka Naran. Limdi was about 6 KMs away from Ankevadia. Hirabhai was his uncle's son. He was also staying at Ankevadia. On the day of the incident, this witness alongwith his mother - Naniben and his four year old son Gunvant, who was suffering from a boil, and Hira Jivan had gone to Limdi for getting Gunvant treated by one Karimbhai. They had started for Limdi around 6 o'clock in the evening. At Limdi, they went to the house of Karimbhai, who was not present, as he had gone to Wadhvan. They had, therefore, started for the bus station to return to Ankevadia. At the bus station, they were standing near platform No.10 and at that time, the accused Chandrakant came there and started asking repayment of money from Hira Jivan. Hira said that he had no money, but the accused kept on insisting for payment. Hira told him that he would pay the amount after ten days, but the accused did not pay any heed and continued to insist on payment. Hira thereupon said that he would not pay and the accused then gave a knife blow, which injured the right hand of Hira, and ran away. This witness and his mother then started for taking Hira to the hospital and when they came out of the bus station, the accused again attacked Hira Jivan and gave him three to four knife blows. He has stated that the accused gave him a knife blow on his abdomen, chest, right arm and he did not know as to where the fourth blow fell. The incident took place near the octroi post outside the bus station, opposite Bhavubha's canteen. According to this witness, he was about ten feet away when the accused gave knife blows to Hira. As he was afraid, he did not go near him. The accused ran away after Hira fell down. Thereafter, this witness started running for some distance after the accused, who threatened him and therefore, he retreated. Thereafter, they took Hira to the hospital at Limdi where he died. In his cross-examination, a minor omission is brought out about the insistence of the accused for recovery of the amount

and about the fact that even after Hira told the accused that he would pay him the amount after ten days, he kept on insisting. There is nothing in the cross-examination which would at all affect the material aspects of the prosecution version, namely, that the accused had initially given a knife blow to Hira which caused a minor cut on his forearm and when he was being taken for being treated for this injury, the accused who was waiting outside the gate of the bus station, again pounced on Hira and gave him knife blows on his chest, abdomen and right arm, all of which injuries are corroborated by the medical evidence as well as the inquest panchnama exh.5.

5. The other eye-witness Naniben, in her deposition exh.10, has also stated that the accused had asked for payment of his amount from Hira at the bus station of Limdi in the evening around 7.00 to 7.15 p.m. on the day of the incident, but since Hira showed his inability to pay the amount, the accused gave him a knife blow on his arm and had run away. Thereafter, when this witness and her son Mansukh were taking Hira for treatment to the hospital, the accused again attacked Hira when they came out of the gate of the bus station and gave him knife blows on his chest, abdomen, arm etc., as a result of which Hira fell down near a canteen. The person to whom the canteen belonged, helped them in getting an auto-rickshaw in which they took Hira to the hospital, where he died within a short time. On the material aspects of the prosecution story, this witness has stood the test of cross-examination and there is no reason why her version should not be accepted.

6. Prosecution witness Bhavubha, who was the owner of the canteen near which Hira had fallen down, has in his deposition exh.11 stated that the deceased had emerged from the gate of the bus station alongwith one man and a woman and he had fallen down, and that this witness had called for an auto-rickshaw and sent them to the hospital. The prosecution witness Dilip, in his deposition exh.12, has also spoken about three persons emerging from the bus station, of whom one was female and one of the boys falling down profusely bleeding and his being taken by the two others to the hospital in an auto-rickshaw.

7. The medical version fully supports the deposition of the eye-witnesses. Dr. Atul Amrutlal Modesara, in his deposition exh.21, has proved the post mortem notes exh.23 and has stated that all the injuries which were noticed by him were antemortem and were possible by a sharp cutting instrument like the muddamal knife.

According to him, the injuries on the heart and the lung were sufficient in the ordinary course of nature to cause death of Hira. According to him, the injury No.1 by itself was sufficient in the ordinary course of nature to cause death. The injuries which were noticed on the body of Hira are described in column 17 of the post mortem notes, as under :

"(1) Incised wound on chest just below lower end of sternum 3.1/2" x 1" heart deep.

(2) Incised wound just medially to left nipple - 2" x 1/2" lung deep.

(3) Incised wound at right elbow joint (lateral surface) 2" x 1" x muscle deep."

8. Though the above oral evidence corroborated by medical evidence is sufficient to establish guilt of the accused person beyond any reasonable doubt, we also find one reassuring factor of the accused person himself presenting before the police station soon after the incident and producing the knife, coupled with the fact that the knife and sheath as well as the pant worn by him, which were recovered by the police at the time when he was arrested, were sent for analysis to the Forensic Science Laboratory and the chemical analyzer and serologist's report shows that they were having blood stains of the blood belonging to group `B' which was also the blood group of the deceased. This is borne out from the deposition of the investigating officer Shri P.V. Vyas exh.42 and the report of the chemical analyzer and serologist, which is at exh.8 colly. As has been held by the Supreme court in State Government of NCT of Delhi v. Sunil and another, reported in (2001)1 SCC 652, there is no requirement either under section 27 of the Evidence Act or under section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. It was held that recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. It was further held that the Court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its

own worth. Earlier in Modan Singh v. State of Rajasthan, reported in AIR 1978 SC 1511, the Supreme Court had held that if the evidence of investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses do not support the prosecution version.

9. It was contended on behalf of the accused that the accused could not have known after he had gone out of the bus station that Hira will be brought out from the bus station for treatment and therefore, the version which was initially given in the complaint lodged by the accused that he was chased by Hira and when Hira overtook him, the accused had given him knife blows and acted in self-defence, should be accepted. It is clear from the evidence on record that Hira was unarmed at the time of the incident and he least expected an attack on him with a knife just because he was unable to pay on the spot the sum of Rs.100=00 payable by him to the accused. It is obvious that, after initially injuring Hira within the precincts of the bus station which would be usually crowded, the accused went away and when Hira was being taken to a hospital for treating his bleeding wound, the accused pounced again with his knife inflicting fatal injuries on him, which pierced his heart and lung. There is no scope for the accused to take up right of private defence theory in this case, because, there was absolutely no indication of any assault by Hira on the accused who was armed with a knife. No such theory was put up in the cross-examination of any of the two eye-witnesses. The attitude of the accused in initially injuring Hira when expressed his inability to repay his debt and then, again attacking him soon after he came out of the bus station shows that it was a premeditated attack which resulted in serious injuries to Hira and it was not as if the incident had taken place on happening of a sudden fight or in a heat of passion, as was tried to be argued by the learned counsel appearing for the appellant accused.

10. For the above reasons, we find ourselves in complete agreement with the reasoning and findings of the learned trial Judge in convicting the accused for the offence under section 302 of the Indian Penal Code and sentencing him to life imprisonment. The appeal is therefore dismissed.

AUGUST 06, 2001 [R.K.ABICHANDANI, J.]

[SHARAD D. DAVE, J.]

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